SUPREME COURT, U. S
AUG 26 1974
MICHAEL RODAK, JR., C

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

NO. 74-185

ROBERT B. GREEN, Individually and as Administrator of the Estate of JAMES MICHAEL GREEN, Deceased,

Petitioner,

vs.

MARTIN H. WEINBERG, M.D.; MICHAEL ROTOFF, M.D.; IVAN F. BIRD, M.D. and J.G. ELIZONDO, M.D., jointly, severally and in the alternative

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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August 26, 1974

INDEX

Opinions Below 1
Jurisdiction 2
Questions Presented 2
Constitutional and Statutory Provisions Involved 2
Statement of the Case 4
Reasons for Granting the Writ 5
Conclusion 10
Appendix A - Opinion of District Court and Judgment of the Court of Appeals.11

CASE CITATIONS

Covington v. Harris, 419 F.2d 617 6
Donaldson v. O'Connor, 494 F.2d 507 ... 5,6,8
Humphrey v. Cady, 405 U.S. 504 8
In re Gault, 387 U.S. 1 8
Inmates of Boys Training School v. Affleck, 346, F. Supp. 1354..... 8
Jackson v. Indiana, 406 U.S. 715 8
McNeil v. Director, Patuxent Inst., 407, U.S. 245 8
Martorella v. Kelly, 349 F. Supp. 575 . 7,8
Morales v. Turman, 364 F. Supp. 166 ... 8
Robinson v. California, 370 U.S. 660 .. 9,10
Rouse v. Cameron, 373 F.2d 451 7
Stachulak v. Coughlin, 364 F. Supp. 373 7
Welsch v. Litkins, 42, U.S.L.W. 2475 .. 7
Wyatt v. Stickney, 325 F. Supp. 781 ... 7

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

The Petitioner, Robert B. Green, respectfully prays that a Writ of Certiorari issue to review the Judgment Order of the United States Court of Appeals for the Third Circuit, entered in this proceeding on May 30, 1974.

OPINIONS BELOW

No opinion was rendered by the Court of Appeals; its Judgment Order, affirming

the Order of the District Court, is set forth in Appendix A, infra, p. 13. The oral opinion of the District Court granting Respondents' Motion to Dismiss for failure of the Complaint to state a claim upon which relief may be granted is likewise set forth in Appendix A, infra, p.11.

JURISDICTION

The Judgment Order of the Court of Appeals was entered on May 30, 1974. (Appendix A, infra, p.13). This Petition for Certiorari was filed less than 90 days from the date aforesaid. The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254 (1).

QUESTIONS PRESENTED

1. Whether an allegation that a mentally ill person has been deprived of his right to treatment states a claim upon which relief may be granted under the Civil Rights Act, 42 U.S.C. Sec. 1983.

2. Whether there is a constitutionally protected right to treatment for the mentally ill.

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

Constitution of the United States, Amendment V:

> "No person shall ... be deprived of life, liberty, or property, without due process of law ..."

Constitution of the United States, Amendment VIII:

> "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

Constitution of the United States, Amendment IX:

> "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

Constitution of the United States, Amendment XIV; Section 1:

> "...nor shall any state deprive any person of life, liberty, or property without due process of law ..."

United States Code, Title 42:

> Sec. 1983. Civil action for deprivation of rights. "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects or causes to be subjected, any citizen of the United States... to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress."

STATEMENT OF THE CASE

On October 6, 1970, petitioner's decedent, his son aged 21, died while a patient at the Forensic Psychiatry Section of the Vroom Building at the State Hospital in Trenton, New Jersey. Prior to that time, in September 1968, the decedent was committed to the Ancora State Hospital, a psychiatric facility. While decedent was a patient at that hospital, petitioner found that decedent was not receiving any substantially beneficial treatment and, in fact, was being harmed by massive doses of tranquillizing drugs. On one visit, petitioner found that decedent was so drugged that he had to be walked around to prevent a coma.

Shortly after petitioner voiced his objections to hospital officials concerning the treatment of his son, the decedent was transferred on June 20, 1969, to the Vroom Building, a facility for the criminally insane. At no time prior to this was petitioner ever advised that such a move was being contemplated, nor was he advised of the transfer until a few days after it took place.

During the fifteen months subsequent to the transfer, petitioner attempted to have his son moved to private psychiatric facilities. Each and every time that petitioner attempted to effectuate such a transfer, conditions were imposed of such a nature to make the transfer impossible. In actuality, decedent had the status of an involuntarily committed patient. During his stay at the Vroom Building, decedent was not given even minimal care or treatment.

Petitioner was advised of the sudden death of his son on October 6, 1970, without his ever having been advised previously that his son was in ill health. An autopsy was made by the State of New Jersey without petitioner's permission and the State has refused to release the results of the autopsy to doctors representing the petitioner.

Petitioner filed a Complaint in the Federal District Court for the District of New Jersey against the directors and the physician in charge of the decedent at the treatment facility. Petitioner alleged that his son's constitutional right to treatment was violated by Respondents and jurisdiction was based on the Civil Rights Act, 42 U.S.C. Section 1983.

The District Court granted Respondents' Motion to Dismiss the Complaint for failure to state a claim upon which relief may be granted. It held that petitioner's allegation sounded in negligence and was therefore not cognizable under the Civil Rights Act. The Court of Appeals affirmed without opinion.

REASON FOR GRANTING THE WRIT

I. THE DECISION BELOW IS IN CONFLICT WITH THE DECISION OF ANOTHER COURT OF APPEALS ON THE SAME MATTER.

On April 26, 1974 the United States Court of Appeals for the Fifth Circuit held that "a person involuntarily committed to a state mental hospital has a

constitutional right to receive such individual treatment as will give him a reasonable opportunity to be cured or to improve his mental condition." Donaldson v. O'Connor, 493 F.2d 507, 520 (5th Cir., 1974).

In Donaldson, the action was brought by a former mental patient under the Civil Rights Act, 42 U.S.C. Sec. 1983, against hospital and state mental health officials. The Court of Appeals sustained a jury verdict of $28,500.00 in compensatory damages and $10,000.00 in punitive damages.

The plaintiff's allegations in Donaldson were virtually identical to those made by petitioner in the case at bar: that treatment was withheld; that efforts were blocked to have the patient released; and that the patient was wrongly housed with the criminally insane. Donaldson further alleged, as did this petitioner, that the hospital officials acted maliciously and in reckless disregard of the patient's rights. Thus, Donaldson was allowed both compensatory and punitive damages.

It seems that in Donaldson both the trial court and the appellate court completely accepted the proposition that an allegation of denial of treatment is cognizable under the Civil Rights Act. This issue was not a ground for appeal.

The Court in Donaldson correctly noted that the issue of the constitutional right to treatment for the mentally ill had never before been addressed by any of the federal courts of Appeals. The District of Columbia Circuit, however,

did express its opinion, in dictum, that the absence of treatment draws into question the constitutionality of commitment statutes. The Court did not find it necessary to decide the issue, however, because it found a statutory right to treatment: "Because we hold that the right to treatment (statutory) provision applied to appellant, we need not resolve the serious constitutional questions ...." Rouse v. Cameron, 373 F.2d 451 (D.C. Cir. 1966).

The District of Columbia Circuit, after recognizing this statutory right, superimposed a further constitutional right to the "least restrictive alternative" in regard to treatment. Covington v. Harris, 419 F.2d 617 (D.C. Cir. 1969). Noting that commitment entails a extraordinary deprivation of liberty, the Court said, "Such a drastic curtailment of the rights of citizens must be narrowly, even grudgingly, construed in order to avoid deprivations of liberty without due process of law." 419 F.2d at 623.

It should also be noted that a number of district courts have recognized a constitutional right to treatment for mental patients. See Wyatt v. Stickney, 325 F. Supp. 781, (M.D. Ala. 1971), enforced, 344 F. Supp. 373, appeal docketed sub nom., Wyatt v. Aderholt, No. 72-2634 (5th Cir. 1972); Stachulak v. Coughlin, 364 F. Supp. 686 (N.D. Ill. 1973); Welsch v. Litkins, _____F. Supp. _____, 42 U.S.L.W. 2475 (D. Minn. Feb. 15, 1974). In cases involving the detention of juveniles, the right has also been recognized. See Martorella v. Kelly,

349 F. Supp. 575 (S.D.N.Y. 1972); Inmates of Boys Training School v. Affleck, 346 F. Supp. 1354 (D.R.I. 1972); Morales v. Turman, 364 F. Supp. 166 (E.D. Tex. 1973).

II. THE DECISION BELOW IS IN CONFLICT WITH THE APPLICABLE DECISIONS OF THIS COURT.

The Supreme Court has not yet ruled on whether mental patients have a constitutional right to treatment. However, the Third Circuit, by failing to recognize such a right, has acted in violation of certain principles established by this Court.

Jackson v. Indiana, 406 U.S. 715 (1972), involved commitment after a finding of incompetence to stand trial. This Court established the rule that: "at the least, due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed." 406 U.S. at 738. As Judge Wisdom noted in Donaldson: "If the 'purpose' of commitment is treatment, and treatment is not provided, then the 'nature' of the commitment bears no 'reasonable relation' to its 'purpose', and the constitutional rule of Jackson is violated." 493 F.2d at 521.

The same rule was applied in McNeil v. Director, Patuxent Inst., 407 U.S. 245 (1972), in which a person was held for psychological observation after the expiration of a prison sentence. In addition, in Humphrey v. Cady, 405 U.S. 504, 514 (1972), this Court found that an indefinitely committed sex offender's claim that he was receiving no treatment raised a "substantial constitutional claim."

Furthermore, this Court has discussed the issue of the right to treatment in relation to juvenile offenders. In In re Gault, 387 U.S. 1, 22 n. 30 (1967), the Court wrote:

> ...it should be that to the extent that the special procedures for juveniles are thought to be justified by the special consideration and treatment afforded them, there is reason to doubt that juveniles always receive the benefits of such a quid pro quo .....
>
> In fact some courts have recently indicated that appropriate treatment is essential to the validity of juvenile custody, and therefore that a juvenile may challenge the validity of his custody on the ground that he is not in fact receiving any special treatment.

It should be remembered that in all of the above cases, the persons incarcerated or committed were all charged with or convicted of some offense; it would seem constitutionally mandated that even greater protection be afforded to those incarcerated merely because of mental illness.

Furthermore, the constitutional right to treatment is compelled by the rationale of Robinson v. California, 370 U.S. 660 (1962). Confinement of mental patients without treatment is punishment for a mere

condition over which the patient has no control. This type of punishment was declared unconstitutional in Robinson on the ground that it was cruel and unusual in relation to narcotic addicts.

The above cited cases, taken together, constitute a recognition by this Court that mental patients must receive treatment in order that their confinement not violate the Constitution.

CONCLUSION

For the foregoing reasons, this petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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COUNSEL FOR PETITIONER

APPENDIX A

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ROBERT B. GREEN, Individually and as Administrator of the Estate of JAMES MICHAEL GREEN, Deceased, Plaintiff	)	Civil Action 1599-72
vs.	)	ORAL OPINION AND ORDER OF THE COURT
MARTIN H. WEINBERG, M.D., MICHAEL ROTOFF, M.D., IVAN F. BYRD, M.D., and J.G. ELIZONDO, M.D., jointly, severally and in the alternative, Defendants.	)	

Trenton, New Jersey
July 6, 1973

BEFORE THE HONORABLE GEORGE H. BARLOW, USDJ

APPEARANCES:

WILLIAM V. EISENBERG,
For the Plaintiff.

KENNETH S. LEVY, Deputy Attorney General,
For the Defendants.

THE COURT: This is an action by a father on behalf of his deceased son, alleging deprivation of his son's Fifth, Ninth and Fourteenth Amendment rights. Jurisdiction is predicated upon 42 U.S.C. 1983, 28 U.S.C. 1343. It comes before us on a motion to dismiss by the defendants pursuant to 12(b)(6) of the Federal Rules of Civil Procedure, and the matter was decided without oral argument pursuant to the provisions of Rule 78 of the Federal Rules of Civil Procedure.

The plaintiff's deceased son was, by a Court order pursuant to N.J.S.A. 30:4-37, committed to the New Jersey State Hospital at Ancora. He was subsequent transferred to the Vroom Building at the New Jersey State Hospital in Trenton by the Commissioner of Institutions and Agencies in accordance with N.J.S.A. 30:4-83 and N.J.S.A. 30:4-84-3.

The plaintiff alleges that his son died as the result of improper medical treatment. Such an allegation sounds in negligence and is therefore not cognizable under the Civil Rights Act. Smith v. Spina (3d Cir. No. 72-1402, March 1, 1973). Accordingly, we grant defendants' motion to dismiss for failure of the Complaint to state a claim upon which relief can be granted.

We expressly do not reach the question of standing in the disposition of this motion. Without costs.

United States District Judge

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 73-1830

ROBERT B. GREEN, Individually and as Administrator of the Estate of JAMES MICHAEL GREEN, Deceased,

vs.

MARTIN H. WEINBERG, M.D., MICHAEL ROTOFF, M.D., IVAN F. BIRD, M.D., and J. G. ELIZONDO, M.D., jointly, severally and in the alternative

Robert B. Green, Appellant,
(D.C. Civil Action No. 1599-72)

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Submitted under Third Circuit Rule 12(6) - May 29, 1974

Before ROSENN and HUNTER, Circuit Judges, and HANNUM, District Judge

JUDGMENT ORDER

After considering appellant's contention that the district court committed reversible error in dismissing appellant's complaint on the ground that no claim was stated under the Federal Civil Rights Act,

It is ORDERED and ADJUDGED that the order of the district court be and is hereby affirmed. Costs taxed against appellant.

BY THE COURT:

_____
Circuit Judge

Attest:

Thomas F. Quinn,
Clerk

DATED: MAY 30, 1974

I hereby certify that on this 26th day of August, 1974 three copies of the Petition for Writ of Certiorari were mailed, postage prepaid, to William Hyland, Attorney General of New Jersey, State House Annex, Trenton, New Jersey, Counsel for Respondents Martin H. Weinberg, M.D., Michael Rotoff, M.D. and J. G. Elizondo, M.D., and to Horn and Weinstein, Esquires, Guarantee Trust Building, Atlantic City, New Jersey, Counsel for Respondent Ivan F. Bird, M.D. I further certify that all parties required to be served have been served.

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